

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Revision of the Commission's Rules to
Ensure Compatibility with Enhanced 911
Emergency Calling Systems**

Supplement to Petition for Waiver

CC Docket No. 94-102

To: The Wireless Telecommunications Bureau

SUPPLEMENT TO PETITION FOR WAIVER

North Dakota Network Co. ("NDNC"), by its attorneys and pursuant to Sections 1.3, 1.65 and 1.925 of the Commission's Rules, hereby submits this Supplement to the Petition for Waiver submitted September 19, 2001 and respectfully requests that the benchmarks contained therein be extended for an additional six months. In particular, vendor delays have forced NDNC to revise the compliance schedule contained in its waiver Petition. NDNC therefore requests that each of the benchmarks it requested in its September 19, 2001 Petition be extended for an additional six months.

I. BACKGROUND

NDNC is a wholly owned subsidiary of SRT Communications, Inc. ("SRT"), a rural telephone cooperative that provides local exchange telephone and other telecommunications services in the Minot, North Dakota area. NDNC is licensee of Broadband PCS Stations KNLH232 and KNLH234 in the Broadband Personal Communications Service ("PCS"). NDNC uses Nortel's CDMA equipment for its PCS network.

NDNC is committed to complying with Commission requirements regarding TTY, Automatic Location Identification ("ALI") and Communications Assistance for Law Enforcement Act ("CALEA"). However, in order to comply with these government mandates, NDNC must upgrade its system. As the Commission is aware from NDNC's previous filings in this docket, due to Nortel Network's ("Nortel") discontinuation of its support of NDNC's current dual-load wireless and wireline traffic switch, NDNC must purchase a second switch and split the traffic from the existing switch. Before NDNC can split the traffic, it must upgrade the system software to LWW007 (the equivalent of wireless MTX 9). Once the switch split is achieved, NDNC must upgrade the system software a second time to wireless load MTX 10. Because of Nortel's decision to no longer support its dual mode switch, NDNC has been put in the unusual circumstance of having to perform a technically complex switch split seamlessly. Nevertheless, NDNC is committed to do this to comply with Commission E911 TTY and ALI and CALEA mandates.

NDNC has completed the first of the two necessary software upgrades and ordered the new switch February 14, 2002. NDNC has not yet received the new switch from Nortel, and therefore is not yet in a position to install the switch. NDNC has been informed by Nortel that the new switch will be delivered by the end of July, 2002. In addition, in order to accommodate the new switch, NDNC must complete modifications to its physical plant. To this end, NDNC is converting space that is currently used for storage and adding it to the switch room. This conversion requires that a wall between the two rooms be removed, that an additional halon fire protection system be installed and that the current cooling unit be replaced in favor of a larger one that can accommodate the heat generated by the additional switch. However, before the cooling system is replaced, it must be temporarily relocated out of the immediate construction

area, but reinstalled so that the room remains cooled. In addition, NDNC has had to install a new, additional electrical service and larger backup generator just to operate and maintain the upgraded cooling system. These issues complicated the mechanical engineering of the project, which led to an unexpected delay in the selection and engagement of the mechanical contractors. Before the mechanical engineer could complete his work, Nortel had to supply certain technical information relative to the amount of heat the two switches would generate.

The facility construction has taken longer to complete than anticipated because NDNC had to wait for the mechanical engineering to be completed before the construction contractor could begin work. Any contractor chosen by NDNC would be subject to stringent requirements designed to protect NDNC's current switch from contamination and failure, as it will remain in operation during the construction. These requirements necessitate that NDNC engage a contractor that is proficient in construction techniques and practices akin to building laboratories and other sterile facilities that require a great deal of expertise. NDNC has signed a contract with a contractor capable of performing the work and the construction is nearly complete.

While NDNC is well on the road to achieving compliance, there are many additional steps it must take. Construction, splitting the switch and the second software upgrade can take several months to complete. NDNC therefore respectfully requests an additional six months to achieve compliance with the Commission's ALI requirements.

II. GOOD CAUSE EXISTS TO EXTEND THE REQUESTED BENCHMARKS

Good cause exists for the FCC to grant NDNC's request for an extension of the benchmarks requested in its September 19, 2001 Petition for Waiver. Good cause is shown and waiver of a rule is appropriate if “special circumstances warrant a deviation from the general rule

and such deviation will serve the public interest.”¹ Similarly, under the Commission’s rules governing Wireless Radio Services, the Commission may grant a waiver if, in view of unique or unusual factual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.² The Commission has consistently concluded that waiver of a regulatory deadline is appropriate when non-compliance “is due to circumstances beyond the licensee’s control.”³ Moreover, the Commission has specifically recognized that “technology-related issues” delaying implementation could warrant grant of a waiver to allow for their resolution.⁴

In NDNC's case, special circumstances exist because NDNC cannot proceed with its proposed Phase II implementation schedule until a new wireless-only switch is installed. However, Nortel has not been able to provide NDNC with the required switch; therefore, NDNC will not be able to implement and test the technology upgrades prior to the deadline. Without the new switch, NDNC cannot activate E911 Phase II-complaint phones on the network because its current switch does not have the necessary technology. NDNC has been diligent in requesting equipment delivery from Nortel, but the strain of assisting its customers in complying with regulatory mandates has apparently exhausted Nortel's resources. NDNC is not requesting an open-ended extension, but instead intends to promptly achieve compliance within a reasonable

¹ Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *see also* WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir 1969).

² *See* 47 C.F.R. § 1.925(b)(3).

³ *E.g.*, Order, *McElroy Electronics Corp.; Request for Clarification of Commission Rules Regarding Section 22.911(a) in Relation to Construction of Cellular System for Market No. 15-A2*, 13 FCC Rcd. 7291, 7295, ¶ 8 (WTB 1998).

⁴ *See* Fourth Memorandum Opinion and Order, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, FCC 00-326, 15 FCC Rcd. 17442, 17459, ¶ 43 (2000) (“In the case of E911, we have recognized that there could be instances where technology-related issues or exceptional circumstances may mean that deployment of Phase II may not be possible by October 1, 2001, and indicated that

period after the original deadline. Strict enforcement of the ALI compliance deadline in this instance would be inequitable and especially burdensome on a small carrier such as NDNC, because it lacks the resources and market power that larger carriers can use to influence vendor delivery schedules and to participate in technology development and beta testing programs.

Finally, the underlying purpose of Section 20.18 would be frustrated by strict enforcement of the deadline and benchmarks. Enforcing a strict deadline against NDNC when the necessary hardware and software upgrades for ALI capability on its network are not available to it would defeat the whole purpose of the rule; NDNC requires the assistance and cooperation of its equipment vendor, Nortel, to achieve compliance. Such assistance and cooperation, while promised, has been slow in coming. NDNC submits that application to it of the initial deadline for selling and activating handsets, as well as the initial benchmark requested in its Petition for Waiver, would be contrary to the public interest and unduly burdensome and respectfully requests an additional six months to achieve each of the Enhanced 911 Phase II Automatic Location Identification handset-based service benchmarks.

NDNC had no reasonable alternative than to wait for Nortel to provide it with a new switch. NDNC's system is completely based on Nortel infrastructure; any alternative ALI solution would require a complete replacement of NDNC's entire system. Such an action would be financially prohibitive and economically wasteful. NDNC chose the dual switch to serve its rural market because it was more economical at the time than a two-switch system. As a rural operator, NDNC's license area is comparatively sparsely populated; it does not receive a return on its infrastructure development investment as rapidly as non-rural operators. Therefore, when

these cases could be dealt with through individual waivers as these implementation issues are more precisely identified.”).

constructing its system, NDNC chose a dual load switch, the most economical alternative. At the time NDNC purchased the switch, it did not envision that Nortel would discontinue its support of the technology a few short years later.

In addition, NDNC is aware that only one of the three Public Safety Answering Points ("PSAPs") in its area is even working toward E911 Phase II compliance. The Minot, North Dakota PSAP has recently secured the necessary funding for the upgrade, however NDNC estimates that it will be at least a year before the PSAP's upgrades have been completed. NDNC is providing Phase I service through this PSAP. The other two PSAPs in NDNC's territory are currently working toward Phase I service with the local analog cellular operators. To the best of NDNC's knowledge, these two PSAPs have no current plans to install Phase II capability. Therefore, grant of the requested extension would prejudice no one as it will be at least another year before Phase II technology can be effectively deployed.

As demonstrated above, NDNC has met the Commission's standards for obtaining the requested waiver of Rule Section 20.18. While Section 20.18 of the Commission's Rules imposes ALI obligations only on Commission licensees (by reason of limitations on the Commission's statutory authority), the Commission has repeatedly acknowledged that achieving full regulatory compliance requires the cooperative efforts of carriers and equipment manufacturers and suppliers. As a service provider only, NDNC would be unable to achieve compliance with the Commission's ALI requirements without the availability of necessary equipment. NDNC simply does not and will not have the equipment available to it to meet the original deadline or the deadlines previously requested. As a small market carrier, NDNC does not have the buying power of the national carriers and must wait for the equipment requirements

of the larger carriers to be satisfied before Nortel will turn its attention to NDNC's requirements and NDNC will be able to complete the upgrade to its system to meet regulatory obligations.


The revised benchmarks would be as follows:

- July 1, 2003 - Begin selling and activating location capable handsets;
- By September 30, 2003 - Ensure that at least 25 percent of all new handsets activated are location-capable;
- By March 30, 2004 - Ensure that at least 50 percent of all new handsets activated are location capable;
- By September 30, 2004 - Ensure that all new handsets activated are location-capable;
- By September 30, 2007 - Achieve 95 percent penetration of location-capable handsets among NDNC subscribers;
- By October 1, 2003 or within six months of receiving a PSAP request, whichever is later - Begin delivering E911 Phase II Service to the PSAP.

III. CONCLUSION

It is clear that NDNC has been diligent in pursuing compliance with the Commission's ALI requirements, but is unable to meet the requirements due to matters that are utterly beyond its ability to control. In view of the foregoing, NDNC respectfully submits that the waiver requested herein is in the public interest and respectfully requests that it be granted.

Respectfully submitted,
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